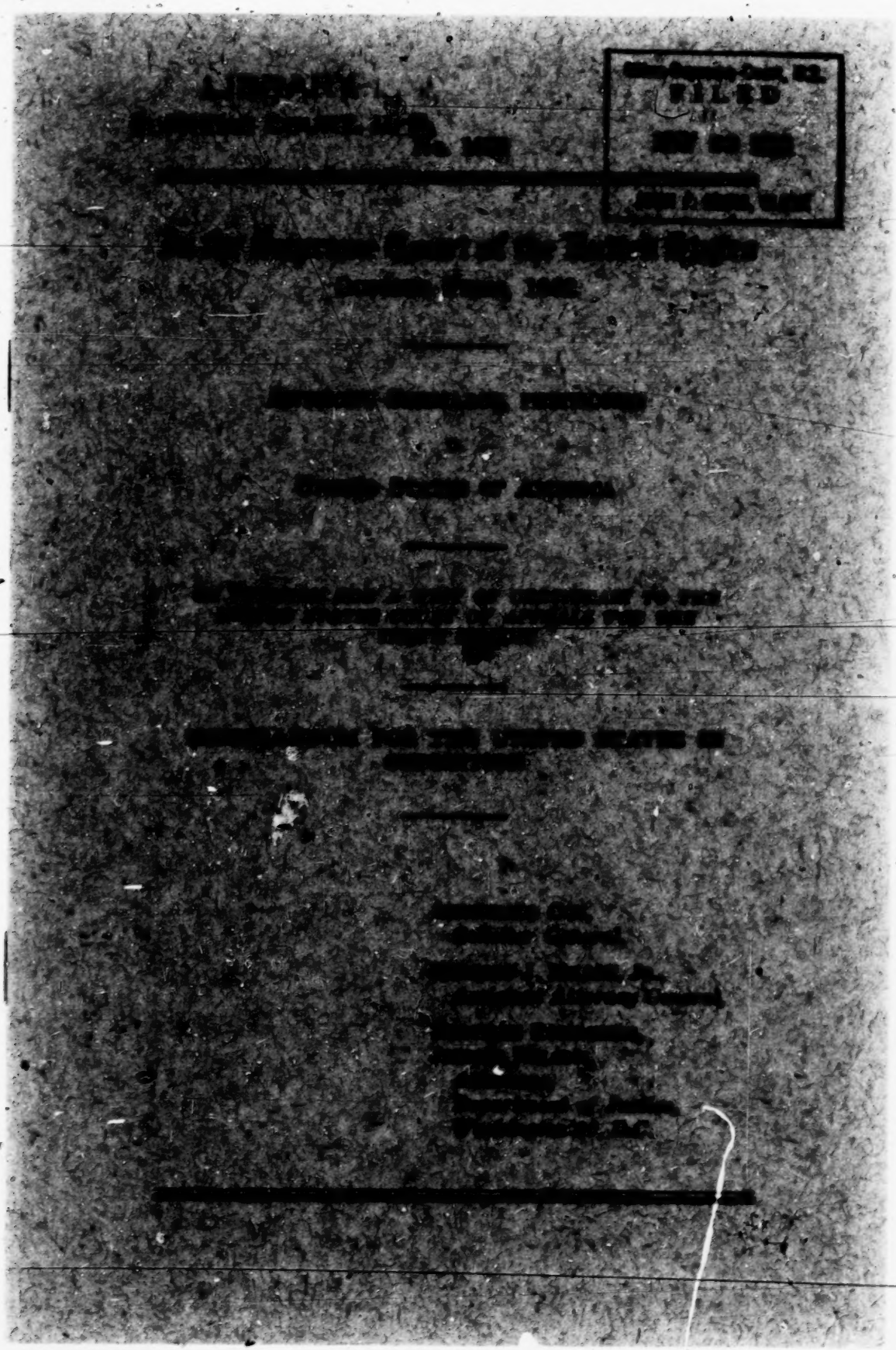

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1052

ANTHONY SIRIMARCO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The judgment of the court of appeals was entered on January 15, 1963. A petition for rehearing en banc was denied on March 20, 1963 (Pet. 23). The petition for a writ of certiorari was not filed until April 25, 1963, and is therefore out of time under Rule 22-2 of the Rules of the Court.

In any event, resolution of the issue raised in the petition is not necessary to the disposition of the case. Petitioner was sentenced to four years im-

prisonment on each of two counts, the sentences to run concurrently. The motion to suppress relates only to the counterfeit bills charged in count II. Count I charged the earlier fraudulent passing of one counterfeit twenty dollar bill on April 21, 1961. As to this count, the government proved not only that the bill was passed, but also that prior thereto, during February and March of 1961, petitioner had on several occasions displayed quantities of counterfeit twenty dollar bills to a friend and had asked the friend to help him obtain good money for the bogus bills (R. 54-58). Thus the verdict and judgment can be sustained wholly apart from the twenty-nine bills involved in the motion to suppress, and there is therefore no occasion to reach the issue presented by the petition. *United States* v. *Sheridan*, 329 U.S. 379; *Pinkerton* v. *United States*, 328 U.S. 640; *Hirabayashi* v. *United States*, 320 U.S. 81.

In light of these facts, we do not discuss the merits of the motion to suppress. We note, however, that the opinion below fully answers the questions raised by the search and seizure, if they are presented here. See also, *United States* v. *1960 Bags of Coffee*, 8 Cranch 398; *The Mars*, 8 Cranch 417; *Gelston* v. *Hoyt*, 3 Wheat. 246; *Caldwell* v. *United States*, 8 How. 366; *Henderson's Distilled Spirits*, 14 Wall. 44; *Thacher's Distilled Spirits*, 103 U.S. 679; *Origet* v. *United States*, 125 U.S. 240; *United States* v. *Stowell*, 133 U.S. 1; *United States* v. *Lee*, 274 U.S. 559, 562.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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Assistant Attorney General.

BEATRICE ROSENBERG,
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Attorneys.

MAY 1963.

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